

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

FELIX P. BABAUTA	§	
	§	
VS.	§	CIVIL ACTION NO. H-08-251
	§	
HARRIS COUNTY SHERIFF'S	§	
DEPARTMENT, ET AL.	§	

OPINION AND ORDER

On March 16, 2011, Plaintiff/Appellant, Felix P. Babauta, filed an "Application to Proceed without Prepayment of Fees" in an effort to appeal from an Order of the District Court denying his "Amended Motion for Relief from Judgment" entered on December 14, 2010.

On January 18, 2011, this Court granted Babauta an extension of time and gave Babauta until February 8, 2011, to file his Notice of Appeal. Once again, Babauta missed a deadline by filing his Notice of Appeal on February 11, 2011, three days after the court-imposed deadline. The Court notes, however, that had Babauta been given the maximum extension available of 60 days, his Notice of Appeal would have been timely. While it appears to this Court that the Court of Appeals lacks jurisdiction to consider Babauta's tardy appeal, it will, out of caution, grant the instant Application with the understanding that it will have no effect on whether Babauta's Appeal was timely file or not. See Briggs v. Lucas, 678 F.2d 612, 613 (5th Cir. 1982) (A belated order granting Plaintiff leave to proceed on appeal in forma pauperis "cannot breathe life into an appeal that. . . was untimely" and subject to dismissal for lack of appellate jurisdiction.)

It is, therefore, **ORDERED** that the "Application to Proceed without Prepayment of Fees" (Instrument no. 129) of Plaintiff/Appellant, Felix P. Babauta, is **GRANTED**.

DONE at Galveston, Texas, this 28th day of March, 2011.



John R. Froeschner
United States Magistrate Judge